

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

HUGO LUA, P-48040,

Plaintiff(s),

vs.

NANCY ADAM, M.D.,

Defendant(s).

)
)
) No. C 12-1793-CRB (PR)
)
) ORDER GRANTING
) DEFENDANT'S MOTION FOR
) SUMMARY JUDGMENT
)
) (Docket #29 & 35)
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)

Plaintiff Hugo Lua, a prisoner at Pelican Bay State Prison (PBSP) in Crescent City, California, filed a pro se complaint for damages under 42 U.S.C. § 1983 alleging that he received improper medical care for severe nerve pain. Plaintiff specifically alleges that PBSP Dr. Nancy Adam improperly discontinued his long-term pain medication despite his protests and medical history of severe nerve pain resulting from multiple herniated spinal discs.

Per order filed on July 13, 2012, the Court screened Plaintiff's complaint pursuant to 28 U.S.C. § 1915A and found that Plaintiff's allegations, when liberally construed, stated a cognizable Eighth Amendment claim under § 1983 for deliberate indifference to serious medical needs against Dr. Adam and ordered her served. July 13, 2012 Order (dkt. #8) at 2.

1 Defendant Dr. Adam now moves for summary judgment under Federal
2 Rule of Civil Procedure 56 on the ground that there are no material facts in
3 dispute and that she is entitled to judgment as a matter of law. Mot. for Summ. J.
4 (dkt. #29) at 1. Defendant specifically argues that, even when viewed in the light
5 most favorable to Plaintiff, the evidence in the record does not demonstrate that
6 she was deliberately indifferent to Plaintiff's serious medical needs in violation
7 of the Eighth Amendment. Id. at 1-2. Plaintiff has filed an opposition and
8 Defendant has filed a reply.

9 Plaintiff also recently filed a motion asking the Court to issue a temporary
10 restraining order (TRO) and/or preliminary injunction ordering Defendant and
11 the PBSP Chronic Pain Management Committee to reissue Plaintiff's methadone
12 medication for his lower back pain. Mot. for TRO (dkt. #35) at 1.

13 **UNDISPUTED FACTS**

14 As of September 27, 2011, Plaintiff was housed at California State Prison,
15 Los Angeles County (LAC), and was taking methadone and ibuprofen for chronic
16 lower back pain arising out of previous injuries. Adam Decl. (dkt. #29-1) at 2.
17 Due to his pain, Plaintiff received certain accommodations at LAC: (1) he was
18 housed in a ground floor cell in a bottom bunk; (2) he was allowed to use a
19 single-point cane and urine catheter; and (3) he was not to stand or sit for periods
20 greater than twenty minutes. Opp'n to Mot. for Summ. J. (dkt. #37) at 12-13.

21 On September 28, 2011, Plaintiff was transferred from LAC to PBSP.
22 Adam Decl. at 2. PBSP Nurse Lopez examined Plaintiff upon his arrival. Id. On
23 discharge the next day, PBSP Dr. Martinelli prescribed Plaintiff the same amount
24 of methadone and ibuprofen that he had received at LAC. Id. at 2-3.

25 On October 3 and 10, 2011, PBSP Nurse Ray treated Plaintiff in response
26 to his complaints of ineffective pain medication and continued chronic lower
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1 back pain. Id. at 3; Ray Decl. (dkt. #29-4) at 2. Plaintiff's prescription for
2 methadone (35 mg) was renewed several days later. Ray Decl. at 2.

3 On November 1, 2011, PBSP Nurse Smith treated Plaintiff for his
4 complaint of constipation related to his bowels, which he noted was made worse
5 by his pain medications. Smith Decl. (dkt. #29-7) at 2; Adam Decl. at 3.

6 On November 2, 2011, Defendant assessed Plaintiff's neurogenic bladder
7 condition and need for additional urinary catheters, and wrote a new
8 comprehensive disability and accommodation form to allow Plaintiff to keep four
9 catheters at a time in his cell. Adam Decl. Ex. H.

10 On November 5, 2011, Plaintiff completed an Initial Pain Assessment
11 form where he wrote that taking methadone "don't [sic] help relieve any pain."
12 Adam Decl. at 4.

13 On November 10, 2011, PBSP Nurse Risenhoover treated Plaintiff for
14 chronic lower back pain and referred the matter to the Pain Management
15 Committee. Risenhoover Decl. (dkt. #29-5) at 2. Plaintiff complained that the
16 methadone was not working, and Nurse Risenhoover expressed concerned about
17 Plaintiff's continued use of methadone because it is an opiate with addictive
18 properties. Risenhoover Decl. at 2. The Pain Committee nonetheless agreed to
19 renew Plaintiff's methadone prescription for the time being. Opp'n to Mot. for
20 Summ. J., Ex. B.

21 On November 14, 2011, prison staff advised Defendant that Plaintiff
22 attacked an officer with his walking cane while ambulating with a steady gait.
23 Adam Decl. at 4. Two days later, prison staff advised Defendant that Plaintiff
24 had stood on top of his toilet without his walker and threatened to attack staff
25 members with his walker. Id.

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1 On November 17, 2011, Defendant treated Plaintiff and started a
2 methadone taper. Id.; Opp'n to Mot. for Summ. J. at 2. Defendant advised
3 Plaintiff that tapering him off methadone should improve his nighttime
4 neurogenic bladder symptoms and eliminate opiate-caused dizziness. Adam
5 Decl. at 4.

6 On November 21, 2011, Defendant prescribed Plaintiff acetaminophen
7 (650 mg) for pain to be taken in conjunction with the methadone taper. Id. at 5.

8 On November 26, 2011, Plaintiff fell in his cell and was admitted into the
9 Correctional Treatment Center (in-house hospital) at PBSP. Id. Physician
10 Assistant Thomas treated Plaintiff and increased his methadone to 40 mg and
11 continued the acetaminophen at 650 mg. Id.

12 On November 28 and 29, 2011, Defendant treated Plaintiff at the
13 Correctional Treatment Center for leg weakness and, after an examination,
14 elected to continue Plaintiff's methadone taper. Id. Defendant prescribed
15 Plaintiff 30 mg methadone and 650 mg acetaminophen, and discharged him. Id.

16 On December 1, 2011, the PBSP Chronic Pain Management Committee
17 met to discuss Plaintiff's medications. Id. at 6. Defendant reported to the
18 Committee that Plaintiff complained about the methadone making him "lazy" and
19 that her objective findings of Plaintiff's pain were inconsistent. Id. Doctors
20 Ikegbu and Chief Medical Officer Sayre attended the Pain Committee meeting
21 and evaluated Plaintiff's medical condition, symptoms, medical findings,
22 treatment records and medications. Id.; Sayre Decl. (dkt. #29-6) at 3. They
23 agreed with Defendant's course of treatment of tapering Plaintiff off methadone
24 and prescribing 650 mg acetaminophen as an interim non-narcotic analgesic,
25 concluding that such treatment was "medically appropriate under the
26 circumstances." Adam Decl. at 6; Sayre Decl. at 3.

1 As of December 1, 2011, Defendant tapered Plaintiff off methadone as
2 follows: December 14, 2011, 20 mg; December 9, 2011, 10 mg; and December
3 14, 2011, 5 mg. Adam Decl. at 6.

4 On December 15, 2011, Plaintiff filed a Form 602 Appeal to restore his
5 methadone medication. Mot. for Summ. J. at 5. Plaintiff's appeal was rejected at
6 the first-level of review on December 23, 2011 and, ultimately, at the third-level
7 of review on March 20, 2012. Id.

8 On April 11, 2012, Plaintiff filed the instant action alleging that Defendant
9 was deliberately indifferent to his serious medical needs by improperly
10 discontinuing his long-term pain medication.

11 DISCUSSION

12 A. Standard of Review

13 Summary judgment is proper when the pleadings, discovery, and affidavits
14 demonstrate that there is "no genuine dispute as to any material fact and the
15 movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).
16 Material facts are those which may affect the outcome of the case. Anderson v.
17 Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A dispute as to a material fact is
18 genuine if there is sufficient evidence for a reasonable jury to return a verdict for
19 the nonmoving party. Id.

20 The party moving for summary judgment bears the initial burden of
21 identifying those portions of the pleadings, discovery, and affidavits which
22 demonstrate the absence of a genuine dispute of material fact. Celotex Corp. v.
23 Cattrett, 477 U.S. 317, 323 (1986). Where the moving party will have the burden
24 of proof on an issue at trial, it must affirmatively demonstrate that no reasonable
25 trier of fact could find other than for the moving party. Id. But on an issue for
26 which the nonmoving party will have the burden of proof at trial, as is the case
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1 here, the moving party need only point out “that there is an absence of evidence
2 to support the nonmoving party’s case.” Id.

3 Once the moving party meets its initial burden, the nonmoving party must
4 go beyond the pleadings to demonstrate the existence of a genuine dispute of
5 material fact by “citing to particular parts of materials in the record” or “showing
6 that the materials cited do not establish the absence or presence of a genuine
7 dispute.” Fed. R. Civ. P. 56(c). A triable dispute of fact exists only if there is
8 sufficient evidence favoring the nonmoving party to allow a reasonable jury to
9 return a verdict for that party. Anderson, 477 U.S. at 249. If the nonmoving
10 party fails to make this showing, “the moving party is entitled to judgment as a
11 matter of law.” Celotex, 477 U.S. at 323.

12 **B. Analysis**

13 A prison official violates the Eighth Amendment’s proscription against
14 cruel and unusual punishment when he acts with deliberate indifference to the
15 serious medical needs of a prisoner. Farmer v. Brennan, 511 U.S. 825, 828
16 (1994). To establish an Eighth Amendment violation, a plaintiff must satisfy
17 both an objective standard – that the deprivation was serious enough to constitute
18 cruel and unusual punishment – and a subjective standard – deliberate
19 indifference. Snow v. McDaniel, 681 F.3d 978, 985 (9th Cir. 2012). To meet the
20 objective standard, the denial of a plaintiff’s serious medical need must result in
21 the “unnecessary and wanton infliction of pain.” Id. (quoting Estelle v. Gamble,
22 429 U.S. 97, 104 (1976)). To meet the subjective standard of deliberate
23 indifference, a prison official must know that a prisoner faces a substantial risk of
24 serious harm and disregard that risk by failing to take reasonable steps to abate it.
25 Farmer, 511 U.S. at 837.

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1 Negligence cannot establish liability under the Eighth Amendment. Id. at
2 835-36 n.4. An “official’s failure to alleviate a significant risk that he should
3 have perceived but did not . . . cannot under our cases be condemned as the
4 infliction of punishment.” Id. at 838. Instead, “the official’s conduct must have
5 been ‘wanton,’ which turns not upon its effect on the prisoner, but rather, upon
6 the constraints facing the official.” Frost v. Agnos, 152 F.3d 1124, 1128 (9th Cir.
7 1998) (citing Wilson v. Seiter, 501 U.S. 294, 302-03 (1991)). Prison officials
8 violate their constitutional obligation only by “intentionally denying or delaying
9 access to medical care.” Estelle, 429 U.S. at 104-05.

10 A showing of nothing more than a difference of medical opinion as to the
11 need to pursue one course of treatment over another is generally insufficient to
12 establish deliberate indifference. Toguchi v. Chung, 391 F.3d 1051, 1058 (9th
13 Cir. 2004). To prevail on a claim involving choices between alternative courses
14 of treatment, a prisoner-plaintiff must show that the course of treatment the
15 doctor-defendants chose was medically unacceptable under the circumstances
16 and that they chose this course in conscious disregard of an excessive risk to
17 plaintiff’s health. Id.

18 Defendant claims she is entitled to summary judgment because, even when
19 viewed in the light most favorable to Plaintiff, the evidence in the record does not
20 show that she was deliberately indifferent to Plaintiff’s nerve pain. The Court
21 agrees. In view of the undisputed evidence in the record, no reasonable jury
22 could find that Defendant disregarded Plaintiff’s pain problems by failing to take
23 reasonable steps to abate them. See Farmer, 511 U.S. at 837.

24 The record makes clear that each time Defendant examined Plaintiff,
25 Defendant considered Plaintiff’s concerns, identified the problems and took
26 reasonable steps to abate them by treating them. See id. Defendant first
27 examined Plaintiff on November 2, 2011 and issued Plaintiff additional urinary
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1 catheters for his neurogenic bladder condition. After Defendant examined
2 Plaintiff two weeks later, Defendant concluded that a methadone taper was
3 proper because (1) Plaintiff had noted that methadone was not working, (2)
4 methadone would increase Plaintiff's fall risk and (3) methadone was likely to
5 worsen Plaintiff's constipation and possibly worsen his urinary retention. Adam
6 Decl. at 4-5. Defendant prescribed Plaintiff 650 mg acetaminophen for pain as
7 an interim non-narcotic analgesic. On November 28, 2011, Defendant again
8 treated Plaintiff, this time at the Correctional Treatment Center for his claimed
9 leg weakness. After an examination, Defendant concluded that Plaintiff should
10 continue his methadone taper.

11 Plaintiff argues that Defendant was deliberately indifferent to his serious
12 medical needs because the medication Defendant prescribed did not abate
13 Plaintiff's pain. Opp'n to Mot. for Summ. J at 11. Plaintiff also claims that he
14 requested to have the methadone increased to twice a day, not discontinued. Id.
15 at 2. But Plaintiff's mere disagreement with Defendant's chosen course of
16 treatment – to taper him off methadone – is not enough to establish deliberate
17 indifference. See Franklin, 662 F.2d at 1344.

18 Plaintiff has set forth no evidence whatsoever showing that the course of
19 treatment Defendant chose was medically unacceptable under the circumstances
20 and that Defendant chose this course of treatment in conscious disregard of an
21 excessive risk to Plaintiff's health. See Toguchi, 391 F.3d at 1058. In fact, Dr.
22 Ikegbu and Chief Medical Officer Sayre of PBSP's Chronic Pain Management
23 Committee both agreed with Defendant's course of treatment of tapering Plaintiff
24 off methadone and prescribing acetaminophen as an interim non-narcotic
25 analgesic. Sayre Decl. at 3. Both doctors stated that "tapering off [Plaintiff's]
26 methadone was medically appropriate under the circumstances." Id.

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1 Contrary to Plaintiff's suggestion, this case does not present a situation
2 where a doctor repeatedly prescribed unworkable treatment with the knowledge
3 that it had no hope of succeeding and, in fact, would only cause a patient further
4 delay and pain. To the contrary, the record makes clear that each time Defendant
5 examined Plaintiff, Defendant considered Plaintiff's concerns, identified the
6 problems and took reasonable steps to abate them by treating them with
7 acceptable courses of treatment. See Farmer, 511 U.S. at 837; Toguchi, 391 F.3d
8 at 1058. Plaintiff's disagreements with Defendant's treatment decisions amount
9 to no more than a claim for negligence or medical malpractice not cognizable
10 under § 1983. See Farmer, 511 U.S. at 835-36 & n.4; Toguchi, 391 F.3d at
11 1060-61.

12 In sum, Plaintiff has not demonstrated the existence of a genuine dispute
13 of material fact on his claim that Defendant was deliberately indifferent to his
14 serious medical needs. Defendant consequently is entitled to summary judgment
15 as a matter of law. See Celotex, 477 U.S. at 323.

16 And for essentially the same reasons, plaintiff's motion for preliminary
17 injunctive relief (i.e., some sort of order compelling Defendant and the PBSP
18 Chronic Pain Management Committee to reinstate his methadone) must be denied
19 – plaintiff has not shown that he is likely to succeed on the merits or that he is
20 likely to suffer irreparable harm in the absence of the relief he seeks. See
21 Stormans, Inc. v. Selecky, 586 F.3d 1109, 1127 (9th Cir. 2009). While Plaintiff
22 has filed various medical records authored by his prison medical care providers
23 and outside physicians, none of these records show that reinstating his methadone
24 is medically necessary; rather, they tend to show that a methadone taper was
25 “medically appropriate under the circumstances.” Sayre Decl. at 3. And while
26 Plaintiff claims that he is dealing with severe lower-back pain, nothing in the
27 record shows that he is likely to suffer irreparable injury without methadone.
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1 Plaintiff was prescribed 650 mg acetaminophen as a non-narcotic alternative pain
 2 medication, a pain treatment the PBSP Chronic Pain Management Committee
 3 found “medically appropriate.” Id.¹

4 CONCLUSION

5 For the foregoing reasons, Defendant’s motion for summary judgment
 6 (docket #29) is GRANTED and Plaintiff’s motion for a TRO/preliminary
 7 injunction (docket #35) is DENIED.

8 The clerk shall enter judgment in accordance with this order and close the
 9 file.

10 SO ORDERED.

11 DATED: July 18, 2013


 12 CHARLES R. BREYER
 13 United States District Judge

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22 ¹This is not to say that Plaintiff is without recourse should he experience
 23 worsening severe lower-back pain as a result of Defendant’s or some other prison
 24 doctor’s deliberate indifference. Although the evidence in the record indicates that
 25 Defendant’s decision to taper Plaintiff off methadone and put him on 650 mg
 26 acetaminophen was “medically acceptable,” this does not preclude Plaintiff from filing
 27 suit in the future and presenting evidence that Defendant’s or some other prison
 28 doctor’s continued pain treatment plan is medically unacceptable and chosen in
 conscious disregard of an excessive risk to Plaintiff’s health. See Toguchi, 391 F.3d at
 1058.